IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3943 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHRI CHUDASMA PARSHOTTAM SAMJIBHAI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MH RATHOD for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 16/03/2001

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation, hereinafter referred to as "petitioner-corporation", has filed this petition, challenging award dated 23-9-1988 passed by the Presiding Officer, Labour Court, Bhavnagar in New Reference (L.C.B.) No.705/1987. The Labour Court by its impugned award set aside the order of the

Competent Authority and directed reinstatement of the respondent-workman without backwages at his original place with continuity of service within stipulated time and also ordered cost of Rs.200/-.

2. The relevant facts give rise to this petition are as under:

2.1 The respondent employee was employed as Badli worker by the petitioner-corporation. He was offered employment whenever work was available with the petitioner-corporation and his name was kept on the waiting list.

2.2 In the course of his duty as a conductor in a bus plying between Bhavnagar to Sanosara on 4-4-1986, it was found that he had collected Rs.50/- from four travelling passengers but did not issue tickets in their favour, nor had he returned the balance of money due to them and it was at the instance of the checking party that the passengers were returned their balance money. It was also alleged that similarly on 20th March, 1986, he had not issued ticket to a passenger. A show-cause notice was issued to the respondent and after having considered his explanation his name was struck off from the waiting list by the Competent Authority.

2.3 Thereafter, the respondent invoked the jurisdiction of the Labour Court, Bhavnagar in New Reference (L.C.B.) No.705/87. The Labour Court by its award dated 23-9-1988, set aside the order of the Competent Authority and directed reinstatement of the workman without backwages. A copy of the award is produced at Exh. "A" to the petition.

2.4 The present petition was filed on 13-4-1989 and this Court has issued notice on 19-6-1989.

3. The learned Counsel appearing on behalf of the petitioner has submitted that the Labour Court has committed serious errors of law in overlooking the fact that in case of Badli workers the Hon'ble Supreme Court has held that a regular Departmental Enquiry is not required to be held. The workman is required to show-cause and his explanation is required to be considered by the Competent Authority. The reasoning of the Labour Court, therefore, is wholly erroneous in law. The misconduct was that of misappropriation of public funds, and the petitioner-corporation was justified in striking off his name from the waiting list.

4. Mr.M.H.Rathod, learned Counsel appearing on behalf of the respondent-workman, states that the present petition is required to be dismissed. He has relied upon the judgement passed in the case of "Gujarat State Road Transport Corporation and Anr. Vs. Chandulal G. Rasadiya and Anr." reported in 1993 (2) GLH page 204, more specifically on para 9 on page 206, which is reproduced below:

"9. In our view, the aforesaid contention of the learned advocate for the petitioner cannot be accepted when a Badli worker's name is to be removed from the waiting list on the ground of this alleged grave misconduct. It is true that 'Badli workers' are not employees of Corporation in view of Regulation. Therefore, the Discipline and Appeal Procedure is not required to be followed in case of 'Badli workers'. However, it should be noted that because of the adverse verdict of grave misconduct against the Badli worker-

(i) it would sligmatize him for his life-time;
(ii) it would also affect his reputation;
(iii) his chances of getting service in S.T.Corporation or in Government Department would be bleak, and
(iv) his livelihood may in certain cases would be at stake.

In this type of cases it would be unreasonable and against the principles of natural justice to hold that as the person is a Badli worker and his name is only removed from the waiting list prepared by the Corporation, there is no necessity of holding a full-fledged enquiry. This would be in violation of principles of natural justice as the person would be condemned unheard which would affect him for the life-time. It is true that at the relevant time there was no administrative instruction issued by the S.T. Corporation for holding departmental enquiry against the Badli worker for his alleged misconduct, therefore, the Corporation was not required to follow the procedure prescribed for employees of the S.T.Corporation for holding departmental enquiry. At the same time the Corporation has realised this defect and hence on 20th October 1987 it has issued a Circular that even with regard to Badli workers, for their alleged misconduct the procedure prescribed for holding departmental enquiry for employees is required to be followed. In any case, as stated above if the procedure prescribed under the Rules was not applicable at the relevant time, yet the Corporation was required to follow the rules of natural justice before arriving at the conclusion that Badli

worker has committed grave misconduct."

5. In my view, issue raised in this petition is squarely covered in the aforesaid judgement of the Division Bench (Coram: M.B.Shah and B.S.Kapadia, J.J.) of this Court and, therefore, the contentions of the learned Counsel for the petitioner-corporation cannot be accepted. The award passed by the Labour Court is required to be upheld.

6. With the aforesaid observations, the petition is dismissed. Rule is discharged. No order as to costs.

16-3-2001 (K.M. Mehta, J.)
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